

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JAMES V. CARIDDI,)
 Plaintiff)
)
) C.A. NO. 05-30111-MAP
)
)
CONSOLIDATED ALUMINUM CORP.,)
 Defendant)

MEMORANDUM AND ORDER RE:
REPORT AND RECOMMENDATION REGARDING
DEFENDANT'S MOTION TO DISMISS
(Docket Nos. 18 & 4)

February 28, 2006

PONSOR, D.J.

Plaintiff has brought this action, seeking reimbursement of certain environmental cleanup costs from Defendant, the former owner of his property. Defendant moved to dismiss the portions of the complaint offered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9610 et seq. This court referred Defendant's motion to Magistrate Judge Kenneth P. Neiman, and on September 26, 2005, Magistrate Judge Neiman issued his Report and Recommendation, to the effect that the motion should be denied. Defendant thereafter filed a timely objection to the Report and Recommendation and Plaintiff replied.

Ordinarily, the court would, at this stage, undertake a de novo review of the Magistrate Judge's Report and

Recommendation. However, developments subsequent to the issuance of the Report and Recommendation have somewhat overtaken the normal procedure.

Immediately on the heels of the Report and Recommendation and objection, Defendant filed a Motion for Summary Judgment. In addition, on February 2, 2006 the parties filed a Joint Motion to Amend Scheduling Order (Docket No. 27), which indicated that the parties "are working cooperatively to identify appropriate response actions as part of good faith settlement discussions."

In light of these discussions, the parties sought a stay of litigation. On February 3, 2006, Magistrate Judge Neiman granted the motion, establishing May 1, 2006 as the date for filing Plaintiff's Opposition to the Motion for Summary Judgment and May 12, 2006 for Defendant's Response.

In light of the parties' pending efforts to resolve this case, the court will decline to adopt Magistrate Judge Neiman's Report and Recommendation regarding the Motion to Dismiss substantively at this time. Rather, the court hereby denies the Motion to Dismiss (Docket No. 4), without prejudice. In the event that the parties are unable to resolve their differences, Defendant may file a motion for reconsideration of its objection, and the court will address the issues raised by the Motion to Dismiss substantively.

For now, the Motion to Dismiss is DENIED, without prejudice.

It is So Ordered.

/s/ Michael A. Ponsor

MICHAEL A. PONSOR

U. S. District Judge